Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)	
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Applications of Deutsche Telekom AG, T-)	WT Docket No. 12-301
Mobile USA, Inc., and MetroPCS)	
Communications, Inc.)	
)	
For Consent to Assign or Transfer Control of)	
Licenses and Authorizations)	

JOINT OPPOSITION OF DEUTSCHE TELEKOM AG, T-MOBILE USA, INC. AND METROPCS COMMUNICATIONS, INC. TO COMMENTS

Deutsche Telekom AG ("DT"), T-Mobile USA, Inc. ("T-Mobile USA"), and MetroPCS Communications, Inc. ("MetroPCS" and, collectively with DT and T-Mobile USA, "Applicants"), hereby submit their joint opposition to the comments filed by the Communications Workers of America ("CWA")¹ requesting that conditions be imposed upon the Commission's approval of the above-captioned proposed transaction. As is well-documented in the Applicants' Public Interest Statement, 2 the proposed transaction combining T-Mobile USA and MetroPCS into a strengthened company ("Newco") satisfies the Commission's standards for approval, does not give rise to any competitive harm, and generates substantial public interest benefits. 3 Tellingly, this transaction is not opposed by any party or any commenter. CWA,

Comments of the Communications Workers of America, WT Docket No. 12-301 (filed Nov. 26, 2012) ("CWA Comments").

Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-301, Lead File No. 0005446627, at Exhibit 1, Description of Transaction, Public Interest Showing, and Related Demonstrations (filed Oct. 18, 2012) ("Public Interest Statement").

while not opposing this transaction, nonetheless proposes conditions that lack any basis in fact and are contrary to law. Accordingly, the Commission should reject CWA's proposed conditions and should rapidly complete its review and approve the proposed transaction without any conditions.

I. THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST AND SHOULD BE GRANTED PROMPTLY

As detailed in the Public Interest Statement, the proposed transaction will generate numerous public interest benefits for customers of T-Mobile USA and MetroPCS, as well as for wireless consumers as a whole. The proposed combination will bring together two companies that presently face significant challenges and will create a stronger carrier better positioned to compete effectively against the other "nationwide" carriers as a result of expanded scale, spectrum and financial resources. By maintaining the MetroPCS brand and extending it to new areas, Newco also will be well positioned as the country's leading value carrier. Importantly, the Applicants' existing and future customers will benefit from the combined company's ability to deliver an enhanced customer experience that includes a wider selection of affordable products and services, deeper and broader coverage, and a world class LTE network. Indeed, given the complementary and adjacent spectrum portfolios of the combining companies, Newco will have sufficient spectrum to deploy at least 20 x 20 MHz LTE in many areas and will be better able to challenge its larger rivals for premium users.

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Indeed, the only other commenter, the Free State Foundation, filed comments in support of the proposed transaction, recognizing the public interest benefits associated with the proposed transaction and urging that the applications be granted. *See* Comments of the Free State Foundation, WT Docket No. 12-301 at 2, 6-7 (filed Nov. 26, 2012) (noting that "consumers stand to gain from a more rapid migration to next-generation wireless services resulting from the proposed merger" and the "proposed combination will likely improve the competitive standing of T-Mobile/MetroPCS in reaching wireless consumers across the nation and thus serve the public interest.").

As such, the proposed transaction will strengthen, not harm, competition. At the national level, the proposed transaction results in no reduction in market participants and, indeed, fortifies the financial, business, network, and spectrum resources of smallest nationwide provider, thereby better positioning the combined company to challenge its larger rivals. In addition, the proposed transaction will not trigger the spectrum screen in any local area and all four nationwide carriers will continue to operate facilities in each affected CMA after closing. Given the total absence of opposition, the lack of competitive harms, and the undisputed benefits of the transaction, the Commission should act expeditiously to grant the applications.

II. CWA'S REQUEST FOR MERGER CONDITIONS HAS NO BASIS IN FACT

CWA seeks merger conditions on the grounds that the proposed transaction will result in job reductions and send call centers offshore. CWA, while not opposing the proposed transaction, nonetheless asks that the FCC impose three conditions on the transaction: (i) no U.S. employee will lose their job as a result of proposed transaction; (ii) network maintenance will continue to be provided by U.S. employees; and (iii) work previously sent offshore by T-Mobile USA and MetroPCS will be returned to the U.S. However, CWA's claims about job reductions, outsourcing and potential impacts on service quality are pure speculation—unsupported by any facts or by a declaration. Indeed, these unfounded claims fly in the face of CWA's own most recent positions concerning mergers before the Commission.

As CWA has previously recognized, merger synergies can have job producing effects. In the AT&T/T-Mobile USA merger, CWA stated that "AT&T, because of the [m]erger, will be in a stronger position to create jobs because it will be better able to expand and extend its business

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CWA Comments at 3, 6. CWA makes the wholly unfounded claim that this transaction will result in the loss of 10,000 jobs. *Id.* at 3.

⁵ *Id.* at 8.

than either AT&T or T-Mobile could have done as separate entities," and explained that "as AT&T grows as a result of the merger, CWA anticipates that there will be further expansion of AT&T employment." CWA also noted that "[p]ast mergers by AT&T have led to an increase in non-management jobs—even with merger 'synergies' (savings)." In this transaction, CWA cannot point to any plausible reasons why the synergies coupled with plans to continue the T-Mobile USA and MetroPCS business models and brands would result in job reductions—rather than job increases—over time. Indeed, one of the benefits of this transaction is the expansion of the MetroPCS brand and model into new areas.

Further, notwithstanding CWA's wholly unsupported claim that the proposed transaction will have a detrimental effect on service quality, ⁸ CWA has previously recognized that merger synergies can result in network quality improvements. In the AT&T/T-Mobile USA transaction, CWA asserted that the combination of AT&T and T-Mobile USA's networks would "bring substantial benefits to [customers] on a daily basis: fewer dropped and blocked calls, decreased network congestion, and increased broadband speeds." Indeed, CWA noted that the Commission has recognized quality-of-service improvements as an important public interest benefit in transactions and stated that "the positive impact that this Transaction will have on the quality of service received by both AT&T and T-Mobile customers should weigh heavily in the Commission's public interest calculus here." CWA does not and cannot point to any credible

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⁶ Comments of CWA, WT Docket No. 11-65 at 23 (filed May 31, 2011) ("CWA AT&T/T-Mobile USA Comments").

⁷ Ex Parte Presentation, CWA, "The AT&T/T-Mobile Merger, Benefits for Consumers and Workers," WT Docket No. 11-65 at 5 (filed May 20, 2011).

⁸ CWA Comments at 6.

⁹ CWA AT&T/T-Mobile USA Comments at 16.

Id. at 17 (citing Applications of Nextel Communications, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order,

reasons why the merger synergies in the instant transaction would result in a different outcome. Indeed, as demonstrated in the Public Interest Statement, this transaction will result in substantial service quality improvements for customers of both companies. ¹¹

Finally, CWA baselessly asserts that "transaction efficiencies" is synonymous with substantial job losses and the closing, or relocation offshore, of call centers. As explained in great detail in the Public Interest Statement, however, the vast majority of the synergies of the proposed transaction are not "human" or "job" based. Rather, as described in the Public Interest Statement, the synergies are due to the combining of T-Mobile USA's and MetroPCS' networks and the elimination of thousands of duplicative cell sites, the phasing out of MetroPCS' CDMA network, and associated operational cost reductions. CWA's speculative assertions about the Applicants' plans for outsourcing also have no basis in fact. At this point, T-Mobile USA and MetroPCS have made no such decisions on post-merger integration and outsourcing is not included in any currently projected synergies. T-Mobile USA did close some call centers earlier this year, but that occurred in the aftermath of a failed merger—not following an approved merger. CWA's claims regarding MetroPCS' outsourcing are also inaccurate. The facts are actually opposite—MetroPCS outsources significantly to U.S. companies with U.S. employees and supports a significant number of U.S. employees through its outsourcing efforts.

For these reasons, CWA's concerns have no basis in fact and thus its proposed conditions should be disregarded.

20 FCC Rcd 13967 at 14015 ¶ 132 (2005) ("Sprint/Nextel Order")); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp., Memorandum Opinion and Order, 19 FCC Rcd 21522 at 21602 ¶ 210 (2004) ("AT&T/Cingular Order").

Public Interest Statement at 22-31.

¹² *Id.* at 40-44.

¹³ CWA Comments at 6.

III. CWA'S REQUEST FOR MERGER CONDITIONS HAS NO BASIS IN LAW

The Commission's standard of review for transfer applications is well established—applicants need to show that the potential public interest benefits of the transaction outweigh any potential public interest harms resulting from the transaction. ¹⁴ The Commission has long held that in order to ensure that a transaction's benefits outweigh its harms, the agency's public interest authority enables it, where appropriate, "to impose conditions on the transfer of control of Commission licenses to mitigate the harms the transaction would likely create." ¹⁵ Such "narrowly tailored, transaction-specific conditions" must be related to the Commission's responsibilities under the Communications Act and related statutes. ¹⁶ However, in this case, the proposed transaction will result in substantial, undisputed benefits to consumers that plainly

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See Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698 at ¶ 28 (2012); see also Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716, ¶ 22 (2010); Applications of AT&T Inc. and Centennial Communications Corp., Memorandum Order and Opinion, 24 FCC Rcd 13915, 13928, ¶ 27 (2009) ("AT&T/Centennial Order").

AT&T/Cingular Order at ¶ 252 (2004); see also AT&T/Centennial Order at 13928, ¶ 109 (2009) (same); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 at ¶ 158 (2008) ("Verizon/ALLTEL Order") ("[W]e will impose additional conditions designed to ensure that the proposed transaction is in the public interest by remedying additional harms which may occur as a result of the proposed transaction."); Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, Memorandum Opinion and Order, 15 FCC Rcd 14032 at ¶ 4 (2000) (The Applicants, however, have proposed conditions that will alter the public interest balance. These conditions are designed to mitigate the potential public interest harms of the Applicants' transaction.").

See, e.g. Verizon/ALLTEL Order at ¶ 29 (2008); Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463 ¶ 30 (2008); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order, 22 FCC Rcd 20295 at ¶ 14 (2007).

outweigh even the imagined harms asserted by CWA. As such, there is no basis in law for the imposition of conditions. Further, imposition of the specific conditions proposed by CWA would be unprecedented.¹⁷

CWA also incorrectly claims that the impact of a merger on U.S. employment is part of the FCC's standard public interest analysis. While the FCC has investigated potential job losses in connection with transactions where job creation is cited as a merger benefit, the Applicants have not made that claim here. Indeed, all of the cases CWA cites on this point involve transactions in which the merging parties affirmatively proffered job growth as a public interest benefit of the transaction (or as a voluntary commitment) to outweigh potential competitive harms. ¹⁹ By putting forth job creation as an asserted benefit of the transaction, those

The cases CWA cites regarding proffered voluntary commitments on jobs are plainly not applicable here as the Applicants have not offered any such voluntary commitments. *See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 4238 at ¶ 224 (2011); *Applications of Puerto Rico Telephone Authority and GTE Holdings (Puerto Rico) ILC*, File No. 03373-03384-CL-TC-

The FCC has not previously identified potential job losses from a transaction as a public interest harm. Rather, job reductions are often part of cited merger efficiencies that are in the public interest that will permit lower prices to consumers or additional investment in innovation. Indeed, the Commission has recognized that headcount reductions and the resulting cost savings can be pro-competitive efficiencies, and certainly not reasons to oppose, deny, or condition a merger. *AT&T*, *Inc.* and *BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662 at 5769-71 ¶¶ 215, 219 (2007) ("*AT&T/BellSouth Order*"); *SBC Communications, Inc.* and *AT&T Corp.* Applications for *Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290 at ¶ 201 (2005).

¹⁸ CWA Comments at 2-3.

See id. at n. 3-4. In the AT&T/T-Mobile USA transaction, the applicants affirmatively claimed job creation as a public interest benefit. See Applications of AT&T and Deutsche Telekom AG, WT Docket No. 11-65, Public Interest Statement at 56-57 (Apr. 21, 2011). In the Sprint/Nextel transaction, the applicants' Public Interest Statement stated that a planned service based in the 2.5 GHz band would generate jobs, but the Commission determined that the services planned for that band were too speculative, and therefore did not credit job creation as public benefit. Sprint/Nextel Order at 14029-30 ¶¶ 168-69.

parties invited the Commission to evaluate the claim in its public interest analysis and—if such claims were necessary to make a public interest finding—determine whether such premises needed to be turned into commitments. That is simply not the case in this transaction before the Commission, ²⁰ and the Commission should decline CWA's request to expand the scope of the proceeding. ²¹

IV. CONCLUSION

The combination of T-Mobile USA and MetroPCS into will plainly serve the public interest. Indeed, the proposed transaction is not opposed by anyone on any grounds.

^{98,} Memorandum Opinion and Order, 14 FCC Rcd 3122, 3148, \P 57-58 (1999); $AT\&T/BellSouth\ Order$ at Appendix F.

While the Applicants do not rely on job growth as a component of their public interest showing nor promise job growth, the Applicants believe that the transaction will "allow the company to grow, potentially increasing employment opportunities"—especially since one of the benefits will be the expansion of the MetroPCS brand into new areas. Public Interest Statement at 44.

In particular, the Commission should reject CWA's attempt to draw the Commission into the dangerous precedent of micromanaging jobs and labor decisions in merger cases.

Accordingly, the Commission should expeditiously grant the license transfer applications and summarily reject CWA's unsupported, unwarranted, and unprecedented requested conditions.

Respectfully submitted,

DEUTSCHE TELEKOM AG AND T-MOBILE USA, INC.

METROPCS COMMUNICATIONS, INC.

By:	/s/
	Nancy J. Victory
	Katy M. Ross
	WILEY REIN LLP
	1776 K Street, NW
	Washington, DC 20006
1	Telephone: (202) 719-7344
	Facsimile: (202) 719-7049

Wolfgang Kopf
Senior Vice President – Public and Regulatory
Affairs
Volker Stapper
Vice President International Competition and
Media Policy
DEUTSCHE TELEKOM AG
Friedrich-Ebert-Allee 140
53113 Bonn, Germany

Tom Sugrue
Senior Vice President, Governmental Affairs
Kathleen O'Brien Ham
Vice President, Federal Regulatory Affairs
T-MOBILE USA, INC.
601 Pennsylvania Avenue, N.W.
Washington DC 20004
Telephone: (202) 654-5900
Facsimile: (202) 654-5963

Their Attorneys

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By: /s/
Carl W. Northrop
Michael Lazarus
TELECOMMUNICATIONS LAW
PROFESSIONALS PLLC
875 15th Street, NW, Suite 750
Washington, DC 20005
Telephone: (202) 789-3120
Facsimile: (202) 789-3112

Mark A. Stachiw General Counsel, Secretary & Vice Chairman METROPCS COMMUNICATIONS, INC. 2250 Lakeside Blvd. Richardson, Texas 75082 Telephone: (214) 570-5800 Facsimile: (866) 685-9618

Its Attorneys